

HOUSE BILL No. 1041

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-14; IC 29-2-19; IC 30-5-5-16; IC 34-30-2-125.4.

Synopsis: Funeral planning. Establishes a statutory form for a funeral planning declaration that allows a person to provide instructions concerning the person's funeral arrangements. Provides that the declaration may be used to designate an individual who will make arrangements after the person's death. Provides that a person designated in a funeral planning declaration is first in the priority and that a person designated in a health care power of attorney is second in the priority of individuals who can authorize the cremation of another person's remains and who may authorize the owner of a cemetery to inter, entomb, or inurn the body or cremated remains of a deceased human. Specifies that a person acting as the attorney in fact under a health care power of attorney has the power to execute a funeral planning declaration on behalf of the principal. Provides that a person who relies in good faith on a funeral planning declaration is immune from liability to the same extent as if the person had dealt directly with the declarant and the declarant had been a competent and living person. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2009.

Van Haaften, Foley

January 7, 2009, read first time and referred to Committee on Judiciary.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1041

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-14-31-26, AS AMENDED BY P.L.102-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 26. (a) Except as provided in subsection (c), the
4 following persons, in the priority listed, have the right to serve as an
5 authorizing agent:

6 **(1) An individual granted the authority to serve in a funeral**
7 **planning declaration executed by the decedent under**
8 **IC 29-2-19.**

9 **(2) An individual granted the authority to serve in a health**
10 **care power of attorney executed by the decedent under**
11 **IC 30-5-5-16.**

12 ~~(†)~~ **(3)** An individual who possesses a health care power of
13 attorney of the decedent, unless the power of attorney prohibits
14 the individual from making plans for the disposition of the
15 decedent's body.

16 ~~(‡)~~ **(4)** The individual who was the spouse of the decedent at the
17 time of the decedent's death.



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~~(3)~~ **(5)** The decedent's surviving adult children. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the crematory authority receives a written objection to the cremation from another adult child.

~~(4)~~ **(6)** The decedent's surviving parent. If the decedent is survived by both parents, either parent may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from the other parent.

~~(5)~~ **(7)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree is surviving, any person of that degree may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from one (1) or more persons of the same degree.

~~(6)~~ **(8)** In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following may serve as the authorizing agent:

(A) If none of the persons identified in subdivisions (1) through ~~(5)~~ of this section **(7)** are available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

However, an indigent decedent may not be cremated if a surviving family member objects to the cremation or if cremation would be contrary to the religious practices of the deceased individual as expressed by the individual or the individual's family.

~~(7)~~ **(9)** In the absence of any person under subdivisions (1) through ~~(6)~~; **(8)**, any person willing to assume the responsibility as the authorizing agent, as specified in this article.

(b) When a body part of a nondeceased individual is to be cremated, a representative of the institution that has arranged with the crematory authority to cremate the body part may serve as the authorizing agent.

(c) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency

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1 investigating the death of the decedent, determines that there is a
 2 reasonable suspicion that a person described in subsection (a)
 3 committed the offense;
 4 the person referred to in subdivision (2) may not serve as the
 5 authorizing agent.

6 (d) The coroner, in consultation with the law enforcement agency
 7 investigating the death of the decedent, shall inform the crematory
 8 authority of the determination referred to in subsection (c)(2).

9 SECTION 2. IC 23-14-55-2, AS AMENDED BY P.L.3-2008,
 10 SECTION 170, IS AMENDED TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as provided in
 12 subsection (d), the owner of a cemetery is authorized to inter, entomb,
 13 or inurn the body or cremated remains of a deceased human upon the
 14 receipt of a written authorization of an individual who professes either
 15 of the following:

16 (1) To be (in the priority listed) one (1) of the following:

17 **(A) An individual granted the authority to serve in a**
 18 **funeral planning declaration executed by the decedent**
 19 **under IC 29-2-19.**

20 **(B) An individual granted the authority to serve in a health**
 21 **care power of attorney executed by the individual under**
 22 **IC 30-5-5-16.**

23 ~~(A)~~ (C) An individual who possesses a health care power of
 24 attorney of the decedent, unless the power of attorney prohibits
 25 the individual from making plans for the disposition of the
 26 decedent's body.

27 ~~(B)~~ (D) The individual who was the spouse of the decedent at
 28 the time of the decedent's death.

29 ~~(C)~~ (E) The decedent's surviving adult child. If more than one
 30 (1) adult child is surviving, any adult child who confirms in
 31 writing that the other adult children have been notified, unless
 32 the owner of the cemetery receives a written objection to the
 33 disposition from another adult child.

34 ~~(D)~~ (F) The decedent's surviving parent. If the decedent is
 35 survived by both parents, either parent unless the cemetery
 36 owner receives a written objection to the disposition from the
 37 other parent.

38 ~~(E)~~ (G) The individual in the next degree of kinship under
 39 IC 29-1-2-1 to inherit the estate of the decedent. If more than
 40 one (1) individual of the same degree of kinship is surviving,
 41 any person of that degree unless the cemetery owner receives
 42 a written objection to the disposition from one (1) or more

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persons of the same degree of kinship.

(2) To have acquired **by court order** the right to control the disposition of the deceased human body or cremated remains.

The owner of a cemetery may accept the authorization of an individual only if all other individuals of the same priority or a higher priority (according to the priority listing in this subsection) are deceased, are barred from authorizing the disposition of the deceased human body or cremated remains under subsection (d), or are physically or mentally incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

(b) A cemetery owner is not liable in any action for making an interment, entombment, or inurnment under a written authorization described in subsection (a) unless the cemetery owner had actual notice that the representation made under subsection (a) by the individual who issued the written authorization was untrue.

(c) An action may not be brought against the owner of a cemetery relating to the remains of a human that have been left in the possession of the cemetery owner without permanent interment, entombment, or inurnment for a period of three (3) years, unless the cemetery owner has entered into a written contract for the care of the remains.

(d) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize the disposition of the decedent's body or cremated remains.

(e) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner of the determination referred to in subsection (d)(2).

SECTION 3. IC 29-2-19 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 19. Funeral Planning Declaration

Sec. 1. As used in this chapter, "declarant" means an individual who signs a funeral planning declaration executed under this chapter.

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1 **Sec. 2.** As used in this chapter, "declaration" means a funeral
2 planning declaration executed under this chapter.

3 **Sec. 3.** As used in this chapter, "designee" means an individual
4 directed by the terms of a declaration to:

5 (1) carry out the funeral plan of the declarant as set forth in
6 the declaration; or

7 (2) make all arrangements concerning ceremonies and other
8 funeral services in the case of a declaration that leaves the
9 decisions to the designee.

10 **Sec. 4.** As used in this chapter, "funeral services" has the
11 meaning set forth in IC 25-15-2-17.

12 **Sec. 5.** As used in this chapter, "grave memorial" has the
13 meaning set forth in IC 14-21-2-2.

14 **Sec. 6.** (a) A person who is of sound mind and is at least eighteen
15 (18) years of age may execute a funeral planning declaration
16 substantially in the form set forth in section 11 of this chapter. A
17 declaration may be included in a will, a power of attorney, or a
18 similar document.

19 (b) A declaration must meet the following conditions:

20 (1) Be voluntary.

21 (2) Be in writing.

22 (3) Direct an individual to serve as the declarant's designee.

23 (4) Be signed by the person making the declaration or by
24 another person in the declarant's presence and at the
25 direction of the declarant.

26 (5) Be dated.

27 (6) Be signed in the presence of at least two (2) competent
28 witnesses who are at least eighteen (18) years of age.

29 (c) The following may not be a witness to a declaration under
30 subsection (b)(6):

31 (1) The person who signed the declaration on behalf of and at
32 the direction of the declarant.

33 (2) A parent, spouse, or child of the declarant.

34 (3) An individual who is entitled to any part of the declarant's
35 estate whether the declarant dies testate or intestate,
36 including an individual who could take from the declarant's
37 estate if the declarant's will is declared invalid.

38 For the purposes of subdivision (3), a person is not considered to be
39 entitled to any part of the declarant's estate solely by virtue of
40 being nominated as a personal representative or as the attorney for
41 the estate in the declarant's will.

42 **Sec. 7.** A declaration may specify the declarant's preferences

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concerning any of the following:

- (1) The disposition of the declarant's remains after the declarant's death.
- (2) Who may direct the disposition of the declarant's remains.
- (3) Who may provide funeral services after the declarant's death.
- (4) The ceremonial arrangements to be performed after the declarant's death.
- (5) Who may direct the ceremonial arrangements to be performed after the declarant's death.
- (6) A grave memorial.

Sec. 8. (a) Except as provided in subsection (b), the provisions of a declarant's most recent declaration prevail over any other document executed by the declarant concerning any preferences described in section 7 of this chapter.

(b) A funeral trust established under IC 30-2-9 or IC 30-2-10 or a contract entered into under IC 30-2-13 prevails over a declaration that conflicts with the trust or contract.

Sec. 9. (a) A person who acts in good faith reliance on a declaration is immune from liability to the same extent as if the person had dealt directly with the declarant and the declarant had been a competent and living person.

(b) A person who deals with a declaration may presume, in the absence of actual knowledge to the contrary, that:

- (1) the declaration was validly executed; and
- (2) the declarant was competent at the time the declaration was executed.

(c) The directions of a declarant expressed in a declaration are binding as if the declarant were alive and competent.

Sec. 10. A declaration must be substantially in the form set forth in section 11 of this chapter, but the declaration may include additional, specific directions. The invalidity of any additional, specific direction does not affect the validity of the declaration.

Sec. 11. The following is the funeral planning declaration form:

FUNERAL PLANNING DECLARATION

Declaration made this ____ day of _____ (month, year). I, _____, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my instructions concerning funeral services, ceremonies, and the disposition of my remains after my death.

I hereby declare and direct that after my death _____ (name of designee) shall, as my designee,

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1 carry out the instructions that are set forth in this declaration. If
 2 my designee is unwilling or unable to act, I nominate _____
 3 as an alternate designee.

4 I hereby declare and direct that after my death the following
 5 actions be taken (indicate your choice by initialing or making your
 6 mark before signing this declaration):

7 (1) My body shall be:

8 (A) _____ Buried. I direct that my body be
 9 buried at _____.

10 (B) _____ Cremated. I direct that my cremated
 11 remains be disposed of as follows:
 12 _____
 13 _____

14 (C) _____ Entombed. I direct that my body be
 15 entombed at _____.

16 (D) _____ I intentionally make no decision
 17 concerning the disposition of my body, leaving the decision
 18 to my designee (as named above).

19 (2) My arrangements shall be made as follows:

20 (A) I request that funeral services be obtained from:
 21 _____
 22 _____

23 (B) I request the following ceremonial arrangements:
 24 _____
 25 _____

26 (C) I request a grave memorial that:
 27 _____
 28 _____

29 (D) _____ I direct that my designee (as
 30 named above) make all arrangements concerning
 31 ceremonies and other funeral services.

32 (3) In addition to the instructions listed above, I request the
 33 following:
 34 _____
 35 _____

36 (4) If it is impossible to make an arrangement specified in
 37 subdivisions (1) through (3) because a funeral home or other
 38 service provider is out of business, impossible to locate, or
 39 otherwise unable to provide the designated service, I direct
 40 my designee to make alternate arrangements to the best of the
 41 designee's ability.

42 It is my intention that this declaration be honored by my family

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and others as the final expression of my intentions concerning my funeral and the disposition of my body after my death. I understand the full import of this declaration.

Signed _____

City, County, and State of Residence

The declarant is personally known to me, and I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not a parent, spouse, or child of the declarant. I am not entitled to any part of the declarant's estate. I am competent and at least eighteen (18) years of age.

Witness _____ Date _____

Witness _____ Date _____

Sec. 12. A declaration may be revoked by the declarant in writing or by burning, tearing, canceling, obliterating, or destroying the declaration with the intent to revoke the declaration.

Sec. 13. Except as otherwise expressly provided in a declaration, a subsequent:

- (1) dissolution of marriage;
- (2) annulment of marriage; or
- (3) legal separation of the declarant and the declarant's spouse;

automatically revokes a delegation of authority in a declaration to the declarant's spouse to direct the disposition of the declarant's body or to make all arrangements concerning funeral services and other ceremonies after the declarant's death.

Sec. 14. Except as otherwise provided in a declaration, section 15 of this chapter controls if a person to whom a declaration delegates the authority to make arrangements after a declarant's death is unable or unwilling to serve.

Sec. 15. The right to control the disposition of a decedent's body, to make arrangements for funeral services, and to make other ceremonial arrangements after an individual's death devolves on the following, in the priority listed:

- (1) An individual granted the authority in a funeral planning declaration executed by the decedent under this chapter.
- (2) An individual granted the authority in a health care power of attorney executed by the decedent under IC 30-5-5-16.
- (3) The decedent's surviving spouse.
- (4) A surviving adult child of the decedent.

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1 (5) A surviving parent of the decedent.

2 (6) An individual in the next degree of kinship under
3 IC 29-1-2-1 to inherit the estate of the decedent.

4 Sec. 16. A person in Indiana may rely on a declaration or
5 similar instrument that was executed in another state and that
6 complies with the requirements of this chapter to the extent that an
7 action requested by the declarant in the declaration or similar
8 instrument does not violate any federal or Indiana law or any
9 ordinance or regulation of a political subdivision.

10 SECTION 4. IC 30-5-5-16 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) This section
12 does not prohibit an individual capable of consenting to the individual's
13 own health care or to the health care of another from consenting to
14 health care administered in good faith under the religious tenets and
15 practices of the individual requiring health care.

16 (b) Language conferring general authority with respect to health
17 care powers means the principal authorizes the attorney in fact to do
18 the following:

19 (1) Employ or contract with servants, companions, or health care
20 providers to care for the principal.

21 (2) If the attorney in fact is an individual, consent to or refuse
22 health care for the principal who is an individual in accordance
23 with IC 16-36-4 and IC 16-36-1 by properly executing and
24 attaching to the power of attorney a declaration or appointment,
25 or both.

26 (3) Admit or release the principal from a hospital or health care
27 facility.

28 (4) Have access to records, including medical records, concerning
29 the principal's condition.

30 (5) Make anatomical gifts on the principal's behalf.

31 (6) Request an autopsy.

32 (7) Make plans for the disposition of the principal's body,
33 **including executing a funeral planning declaration on behalf**
34 **of the principal in accordance with IC 29-2-19.**

35 SECTION 5. IC 34-30-2-125.4 IS ADDED TO THE INDIANA
36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2009]: **Sec. 125.4. IC 29-2-19-9 (Concerning**
38 **a person who relies on a funeral planning declaration).**

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